

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

TECSEC, INCORPORATED,

Plaintiff,

V.

INTERNATIONAL BUSINESS MACHINES CORPORATION, SAS INSTITUTE, INC., SAP AMERICA, INC., SAP AG, CISCO SYSTEMS, INC., SUN MICROSYSTEMS, INC., SYBASE, INC., SOFTWARE AG, SOFTWARE AG, INC., ADOBE SYSTEMS INCORPORATED, EBAY, INC., PAYPAL, INC., AND ORACLE CORPORATION

Defendants.

Case No. 1:10-cv-00115-LMB-TCB

JURY TRIAL DEMANDED

**DEFENDANT EBAY, INC.'S MOTION TO DISMISS OR, IN THE ALTERNATIVE,
MOTION FOR JUDGMENT ON THE PLEADINGS**

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant eBay, Inc. (“eBay”) hereby moves to dismiss with prejudice all claims that Plaintiff TecSec, Incorporated (“TecSec”) has asserted against eBay. In the alternative, eBay moves for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c).

TecSec has accused eBay of directly and indirectly infringing five of its patents. TecSec's amended complaint and its final infringement contentions, however, fail to identify any product or service of eBay that allegedly infringes the asserted patents. Accordingly, TecSec's amended complaint does not state a plausible claim for direct infringement against eBay.

TecSec's claims for indirect infringement, which amount to little more than a recitation of statutory language, also are deficient. TecSec's amended complaint and its final infringement

contentions fail to allege or identify any act undertaken by eBay to induce infringement or contributorily infringe. Accordingly, TecSec's amended complaint fails to state a plausible claim for indirect infringement against eBay.

Based on the foregoing, and as set forth in further detail in the accompanying Memorandum of Law, TecSec's allegations against eBay fail as a matter of law and should be dismissed with prejudice.

Dated: May 26, 2010

Respectfully Submitted,

/s/

Sarah M. Hall (VA Bar # 71084)
George F. Pappas (*pro hac vice*)
Gary Rubman (*pro hac vice*)
COVINGTON & BURLING LLP
1201 Pennsylvania Ave. NW
Washington, DC 20004
Tel: (202) 662-6000
Fax: (202) 662-6291
Email: shall@cov.com
gpappas@cov.com
grubman@cov.com

Nitin Subhedar (*pro hac vice*)
Bhanu Sadasivan (*pro hac vice*)
COVINGTON & BURLING LLP
333 Twin Dolphin Drive, Suite 700
Redwood Shores, CA 94065
Tel: (650) 632-4700
Fax: (650) 632-4800
Email: nsubhedar@cov.com
bsadasivan@cov.com

Attorneys for eBay, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2010 a copy of DEFENDANT EBAY, INC'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS was served by e-mail on the following:

| Plaintiff TecSec, Inc. | |
|---|--|
| Richard L. Wyatt, Jr. Michael A. O'Shea Brian M. Buroker Michael A. Oakes HUNTON & WILLIAMS LLP 1900 K Street, N.W. Washington, D.C. 20006-1109 Tel: 202-955-1500 Fax: 202-778-2201 Email: TecSec@hunton.com | Andrew G. DiNovo Jay D. Ellwanger DINOVO PRICE ELLWANGER & HARDY LLP 7000 N. MoPac Expressway, Suite 350 Austin, TX 78731 Tel: 512- 539-2626 Fax: 512-539-2627 Email: tecsec@dpelaw.com |
| Thomas J. Cawley Stephen Michael Sayers HUNTON & WILLIAMS 1751 Pinnacle Dr., Suite 1700 McLean, VA 22102 Tel: 703-714-7400 Fax: 703-714-7410 Email: TecSec@hunton.com | |
| Defendant IBM Corporation | |
| Jon T. Hohenthanner John M. Desmarais Sharon Billington Jonas McDavit KIRKLAND & ELLIS 601 Lexington Avenue New York, NY 10022 Tel: 202-446-4800 Fax: 202-446-4900 Email: IBMCounsel@kirkland.com | Elizabeth Bernard Christopher Nalevanko Philip Warrwick KIRKLAND & ELLIS 655 Fifteenth Street, N.W. Washington, D.C. 20005-5793 Tel: 202-879-5000 Fax: 202-879-5200 Email: IBMCounsel@kirkland.com |
| Craig Crandall Reilly LAW OFFICE OF CRAIG C. REILLY 111 Oronoco Street Alexandria, VA 22314 Tel: 703-549-5354 Fax: 703-549-2604 Email: craig.reilly@ccreillylaw.com | |

| Adobe Systems Incorporated | |
|--|---|
| Henry C. Bunsow HOWREY LLP 525 Market Street, Suite 3600 San Francisco, CA 94105 Tel: 415-848-4946 Fax: 415-848-4999 Email: BunsowH@howrey.com | James F. Valentine William P. Nelson Henry C. Su Christina M. Finn HOWREY LLP 1950 University Avenue, 4th Floor East Palo Alto, CA 94303 Tel: 650-798-3560 Fax: 650-798-3600 Email: ValentineJ@howrey.com Email: NelsonW@howrey.com Email: SuH@howrey.com Email: FinnC@howrey.com |
| Vivian S. Kuo HOWREY LLP 1299 Pennsylvania Avenue Washington, D.C. 20004 Tel: 202-383-7220 Fax: 202-379-9859 Email: KuoV@howrey.com | |

| Defendant Cisco Systems, Inc. | |
|---|--|
| Craig Crandall Reilly LAW OFFICE OF CRAIG C. REILLY 111 Oronoco Street Alexandria, VA 22314 Tel: 703-549-5354 Fax: 703-549-2604 Email: craig.reilly@ccreillylaw.com | William H. Boice Mitchell G. Stockwell Michael J. Turton Russell A. Korn KILPATRICK STOCKTON LLP 1100 Peachtree Street, NE, Suite 2800 Atlanta, GA 30309 Tel: 404-815-6500 Fax: 404-815-6555 Email: bboice@kilpatrickstockton.com Email: mstockwell@kilpatrickstockton.com Email: mturton@kilpatrickstockton.com Email: rkorn@kilpatrickstockton.com |
| Alton L. Absher III Jon R. Pierce KILPATRICK STOCKTON LLP 1001 West Fourth Street Winston-Salem, NC 27101-2400 Tel: 336-607-7300 Fax: 336-734-2755 Email: jpierce@kilpatrickstockton.com | Amr O. Aly KILPATRICK STOCKTON LLP 31 W. 52nd Street, 14th Fl. New York, NY 10019 Tel: 212-775-8700 Fax: 212-775-8765 Email: aaly@kilpatrickstockton.com |

| | |
|---|--|
| Email: abscher@kilpatrickstockton.com | |
| Stephen Eric Baskin KILPATRICK STOCKTON LLP 607 14TH St NW, Suite 900 Washington , DC 20005-2018 Tel: 202-508-5800 Email: sbaskin@kilpatrickstockton.com | |

| Defendants Oracle Corp. and Sun Microsystems, Inc. | |
|--|---|
| Jonathan D. Link TOWNSEND & TOWNSEND AND CREW LLP 1301 K St NW 9th Floor, East Tower Washington, DC 20005 Tel: (202) 481-9900 Email: jlink@townsend.com | James Gilliland, Jr. A. James Isbester Mehrnaz B. Smith TOWNSEND & TOWNSEND AND CREW LLP 2 Embarcadero Center, 8th Floor San Francisco, CA 94111 Tel: 415-273-7550 Email: jggilliland@townsend.com jisbester@townsend.com mboroumand@townsend.com |

| Defendants SAP America, Inc. and SAP, AG | |
|--|--|
| Jeffrey Kirk Sherwood Charles Daniel Ossola Frank C. Cimino Megan Woodworth Matthew B. Weinstein DICKSTEIN SHAPIRO LLP 1825 Eye Street NW Washington, DC 20006-5403 Tel: 202-887-4000 Fax: 202-420-2201 Email: SAP-TecSec@dicksteinshapiro.com | |

| Defendant SAS Institute, Inc. | |
|---|---|
| Walter D. Kelley, Jr. Tara Lynn Renee Zurawski JONES DAY 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 Tel: 202-879-4278 Fax: 202-626-1700 Email: wdkelley@jonesday.com Email: tzurawski@jonesday.com | David B. Cochran Thomas Groots JONES DAY 901 Lakeside Avenue Cleveland, OH 44114-1190 Tel: 216-586-7029 Fax: 216-579-0212 Email: dcochran@jonesday.com Email: trgroots@jonesday.com |

| Defendants Software AG and Software AG, Inc. | |
|---|---|
| Jeffri A. Kaminski VENABLE LLP 575 7th Street, N.W. Washington, D.C. 20004 Tel: 202-344-4048 Fax: 202-344-8300 Email: jakaminski@venable.com | Michael W. Robinson Stephen K. Gallagher VENABLE LLP 8010 Towers Crescent Dr., Suite 300 Vienna, VA 22182 Tel: 703-760-1684 Fax: 703-821-8949 Email: mwrobinson@venable.com Email: skgallagher@venable.com |
| Defendant Sybase | |
| Blair M. Jacobs Karla L. Palmer Christina A. Ondrick McDERMOTT WILL & EMERY 600 13th Street, N.W. Washington, D.C. 20005-3096 Tel: 202-756-8000 Fax: 202-756-8087 Email: bjacobs@mwe.com Email: kpalmer@mwe.com Email: condrick@mwe.com | Terrence McMahan Vera Elson Yar Chaikovsky Hong Lin McDERMOTT WILL & EMERY LLP 275 Middlefield Road Menlo Park, CA 94205 Tel: 650-815-7400 Fax: 650-815-7401 Email: tmcMahon@mwe.com Email: velson@mwe.com Email: hlin@mwe.com |

/s/

Sarah M. Hall (VA Bar # 71084)
 COVINGTON & BURLING LLP
 1201 Pennsylvania Ave. NW
 Washington, DC 20004
 Tel: (202) 662-6000
 Fax: (202) 662-6291
 Email: shall@cov.com

Counsel for Defendant eBay, Inc.